

REMARKS/ARGUMENTS

Pending claims 1, 2 and 4-20 stand rejected under 35 U.S.C. §103(a) over U.S. Patent No. 5,625,889 (Chikkaswamy) in view of U.S. Patent No. 6,597,672 (Gustafsson). Applicant respectfully traverses the rejection and respectfully requests reconsideration of the same.

As to claim 1, neither of the references teach or suggest sniffing for available cellular frequency channels via a mobile station. As all claim elements are not taught or suggested by the references, claim 1 is patentable. MPEP §2143.03.

In this regard, Chikkaswamy only discloses that a RF detection circuit of an overlay system detects for available frequency channels. However, this detection circuit is part of an overlay system, and not of a mobile station. *E.g.*, Chikkaswamy, col. 1, ln. 64 – col. 2, ln. 35. There is no basis in Chikkaswamy for performing the sniffing for available frequency channels in a mobile station. In this regard, the Office Action merely contends that “it would have been obvious of one of the ordinary skill in the art at the time of the invention that any component within a cellular system may implement the sniffer detection.” Office Action, p. 12. However, the Office Action fails to provide any teaching or suggestion in the references for such modification of the operation of Chikkaswamy. Chikkaswamy teaches the opposite (i.e., teaches away) of such mobile station location of the RF detection. MPEP §2141.02. That is, in Chikkaswamy the RF detection is closely associated with an overlay system so that the overlay system can use idle channels. Since it is the overlay system that is to use such channels, it defies the teaching of Chikkaswamy to contend that “any component within a cellular system may implement the sniffer detection.” Office Action, p. 12. Nor does Gustafsson teach or suggest sniffing for available frequency channels whatsoever. For this reason, claim 1 is patentable.

Nor is there any motivation in the references to combine Chikkaswamy with Gustafsson to obtain the claimed subject matter recited in claim 1. In this regard, the purported motivation is to “optimize the utilization of the capacity within the network.” Office Action, p. 4. While this is one of the stated objects of Gustafsson, nowhere does either of the cited references or the Office Action anywhere teach or suggest how either the multichannel allocation of Gustafsson can be incorporated into the overlay system of Chikkaswamy, or how the RF detection of Chikkaswamy could be used by the system of Gustafsson. That is “the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.” *In re Mills*, 16 U.S.P.Q.2d 1430 (Fed. Cir.

1990). As such, there is no objective reason to combine the teachings of these references. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000). For all these reasons, claim 1 and the claims depending therefrom are patentable over the proposed combination.

Dependent claim 2 is further patentable as neither of the references teaches or suggests communicating via the mobile station on a short-range radio channel. In this regard, the Office Action contends that Chikkaswamy teaches communicating over a voice channel and "it would have been obvious to one of the ordinary skill in the art at the time of invention that a voice channel may be interpreted as a short range radio channel." Office Action, p. 4. However, as disclosed by the specification, a short-range radio channel is different than a cellular channel (e.g., Specification, 17-18), which is all that Chikkaswamy teaches or suggests. Neither of the cited references teaches or suggests short-range radio channel usage. Instead both are directed to cellular systems. Furthermore, the unsupported contention that "sniffer detection may also be used to detect available channels in short range channels in a short range environment" (Office Action, p. 12) is irrelevant to the claimed subject matter, as claim 2 recites communicating on a short-range radio channel, not any sniffer detection of such channels. Accordingly for these further reasons, claim 2 and the claims depending therefrom are further patentable.

For similar reasons, claim 5 is further patentable as neither of the references teaches or suggests substituting at least one allocated cellular channel with a short-range radio channel if the cellular channel becomes unavailable. In this regard, the Office Action concedes that Chikkaswamy nowhere teaches or suggests such substitution. Further, as to Gustafsson all that is taught is moving an existing cellular channel from one location to another to differently allocate channels between different cellular devices. Nowhere however does Gustafsson teach or suggest substituting channels of different types (i.e., short-range and cellular) as recited in claim 5 or its vice versa as recited by claim 6.

For similar reasons as to claims 2 and 5, dependent claim 9 is further patentable as nowhere does either of the references teach or suggest bonding a short-range radio channel and allocated cellular frequency channels. This is so, at least because neither of the references teach or suggest use of short-range radio channels. Furthermore, the Office Action contends that support for the proposed combination is that Gustafsson teaches moving a connection from one channel to another if needed (Office Action, p. 13). However, nowhere does this teach or

suggest either bonding of channels generally, or specifically the recited bonding of a short-range radio channel with allocated cellular frequency channels.

Independent claim 16 is patentable, at least for the same failures discussed above regarding the claim 1 rejection. Further, neither of the references teach or suggest a mobile device that includes a reconfigurable processor core including both a long-range transceiver and a short-range transceiver and a radio frequency sniffer. Instead, both references are directed to base station circuitry. To the extent that either reference discusses cellular devices, these devices are nowhere taught to be anything other than conventional cellular devices such as the subscriber units 12 taught in Chikkaswamy. Furthermore, as discussed above there is nothing in Gustafsson, which is directed to a cellular system, that teaches or suggests a short-range transceiver. For at least these reasons, claim 16 and the claims depending therefrom are patentable over the proposed combination.

Dependent claim 20 is further patentable for the same reasons discussed above regarding claim 9. That is, nowhere does either of the references teach or suggest a circuit configured to bond a short-range radio channel with cellular frequency channels. For this further reason, claim 20 is patentable over the proposed combination.

Pending claim 3 stands rejected under §103(a) over Chikkaswamy in view of Gustafsson and in further view of U.S. Patent No. 6,650,871 (Cannon). Claim 3 is patentable over this proposed combination for at least the same reasons that claim 1 is patentable over the combination of Chikkaswamy and Gustafsson.

Claims 21-27 are patentable at least for the same reasons as the independent claims from which they depend. Further, while the Office Action Summary indicates that claims 21-27 stand rejected, as there is no basis for such rejection in the Office Action. Without a *prima facie* case of unpatentability, these claims are patentable for this further reason. MPEP §2142 ("If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.").

In view of these remarks, the application is now in condition for allowance and the Examiner's prompt action in accordance therewith is respectfully requested. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504.

Respectfully submitted,

Date: March 23, 2006


Mark J. Rozman
Registration No. 42,117
TROP, PRUNER & HU, P.C.
8554 Katy Freeway, Suite 100
Houston, Texas 77024-1805
(512) 418-9944 [Phone]
(713) 468-8883 [Fax]
Customer No.: 21906